



OFFICIAL REPORT

OF THE

STATES OF DELIBERATION

OF THE

ISLAND OF GUERNSEY

HANSARD

Royal Court House, Guernsey, Wednesday, 26th April 2017

*All published Official Reports can be found on the
official States of Guernsey website www.gov.gg*

Volume 6, No. 10

ISSN 2049-8284

Present:

Sir Richard J. Collas, Kt, Bailiff and Presiding Officer

Law Officers

People's Deputies

St Peter Port South

Deputies P. T. R. Ferbrache, J. Kuttelwascher, D. A. Tindall,
B. L. Brehaut, R. H. Tooley

St Peter Port North

Deputies, J. A. B. Gollop, C. N. K. Parkinson, L. C. Queripel, M. K. Le Clerc,
M. P. Leadbeater, J. I. Mooney

St Sampson

Deputies L. S. Trott, P. R. Le Pelley, G. A. St Pier,
T. J. Stephens, C. P. Meerveld

The Vale

Deputies M. J. Fallaize, N. R. Inder, M. M. Lowe, L. B. Queripel,
J. C. S. F. Smithies, S. T. Hansmann Rouxel

The Castel

Deputies C. J. Green, B. J. E. Paint,
M. H. Dorey, J. P. Le Tocq

The West

Deputies A. H. Brouard, A. C. Dudley-Owen, E. A. Yerby,
D. de G. De Lisle, S. L. Langlois

The South-East

Deputies H. J. R. Soulsby, H. L. de Sausmarez, P. J. Roffey,
R. G. Prow, V. S. Oliver

Representatives of the Island of Alderney

Alderney Representatives L. E. Jean and S. D. G. McKinley, O. B. E.

The Clerk to the States of Deliberation

J. Torode, Esq. (H.M. Greffier)

Absent at the Evocation

Miss M. M. E. Pullum, Q.C. (H.M. Procureur); R. M. Titterington, Q.C. (H.M. Comptroller);
Deputy J. S. Merrett (*absente de l'Île*); Deputy R. H. Graham L.V.O., M.B.E. (*relevé à 10h 20*)

Business transacted

Evocation	667
Convocation	667
Billet d'État VIII.....	667
Statement.....	667
States' Assembly & Constitution Committee – Statement by the President	667
Statutory Instrument laid before the States	674
The Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 (Proscribed Organisations) (Amendment) Regulations, 2017	674
Legislation for approval.....	675
I. Policy & Resources Committee - Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 – Draft Projet de Loi – Proposition carried	675
II. Committee for Employment & Social Security - Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017 – Approved	675
III. Policy & Resources Committee - Protection of Investors (Limitation of Liability) (Bailiwick of Guernsey) (Amendment) Ordinance, 2017 – Approved.....	676
IV. Policy & Resources Committee - Access to Neighbouring Land (Guernsey) Law, 2016 (Commencement) Ordinance, 2017 – Approved	676
V. Committee for Employment & Social Security - Same-Sex Marriage (Guernsey) Law, 2016 (Commencement) Ordinance, 2017 – Approved	677
VI. Committee for Home Affairs - Data Protection: EU General Data Protection Regulation – Propositions carried	677
VII. Schedule for future States' business approved.....	687
<i>The Assembly adjourned at 10.50 a.m.</i>	688

PAGE LEFT DELIBERATELY BLANK

States of Deliberation

The States met at 9.30 a.m.

[THE BAILIFF *in the Chair*]

PRAYERS

The Greffier

EVOCATION

CONVOCATION

The Greffier: To the Members of the States of the Island of Guernsey, I hereby give notice that a meeting of the States of Deliberation will be held at the Royal Court House on Wednesday, 26th April 2017 at 9.30 a.m. to consider the Items listed in the Billet d'État which has been submitted for debate.

Billet d'État VIII

STATEMENT

States' Assembly & Constitution Committee – Referendum on Island-wide voting Statement by the President

The Bailiff: Members of the States of Deliberation, good morning to you all. We start today with a Statement from the President of the States Assembly & Constitution Committee, Deputy Fallaize.

Deputy Fallaize: Thank you, sir, for this opportunity to explain the Committee's position in relation to the policy letter it is preparing, and soon will submit, on the referendum which is to be held on the method of electing Deputies.

Mainly I want to be clear about one thing: the Committee will fulfil the States' Resolutions on this matter and it will do so in a timely manner. The key Resolution is a matter of fact: from 2020 all Deputies are to be elected on an Island-wide basis in a single election on one day, provided that method of election is first approved by the people of Guernsey in a referendum.

It has been suggested that the Resolution allows for the Committee to propose to the States nothing other than a referendum which features this one method of election only. This view relies on an unusually prescriptive and bizarre interpretation of the status of States' Resolutions. Government in this Island will soon grind to a halt if it is now to be assumed that Committees

cannot do anything, even on issues which fall within their mandates unless they have been told to do so by the States.

25 In any event, anyone who is inclined to take such a view will be pleased to know that the Propositions which the Committee will shortly submit for debate will allow the States, if they so wish and without the need for any amendments, to agree the details of a referendum solely on the question of whether all Deputies should be elected on an Island-wide basis in a single election on one day.

30 A yes/no referendum on one method of election only, while perhaps superficially attractive, would have significant weaknesses. A yes vote would be clear enough, but a no vote would be clear as mud. Debate would continue about whether the public had implicitly endorsed the current method of election or simply rejected the only alternative on offer and about whether a different electoral system would have been chosen had it been allowed on the ballot paper.

35 Some cynics would accuse the States of having tried to manipulate the outcome in favour of the *status quo* by offering voters, depending on one's view, only the purest or the most extreme form of Island-wide voting. Quite unnecessarily, voters would be denied the chance to express their views on other methods of election despite previous research showing that public opinion on the subject is very diverse.

40 A yes/no referendum on the concept of Island-wide voting, rather than on any particular method of election, would be even worse. A no vote would perhaps but not necessarily be an endorsement of the *status quo*, but a yes vote would provide no clarity about which of the many forms of Island-wide voting was preferred. Yes voters would inevitably disagree with each other. The decision would have to be passed back to the States, who have already spent decades unable to reach a settled view, and the referendum would leave nobody any the wiser – a more pointless exercise it is difficult to imagine.

45 Adopting a more conventional view of States' Resolutions, while the Resolution clearly requires a referendum to be held on whether all Deputies should be elected on an Island-wide basis in a single election on one day, equally clearly the last States did not resolve that the Committee should be precluded from proposing to the States that the referendum should allow the people of Guernsey to express their views on other methods of election also. Therefore, in its policy letter, the Committee will unanimously recommend offering the people of Guernsey a proper and fair choice between five different methods of electing Deputies.

50 The Committee will recommend using preferential and transferable voting in the referendum. Voters will rank the options in their order of preference and the winning option will have secured the broad endorsement of the public. Preferential voting is used in many parts of the world and has been used successfully in referenda.

The five methods of election which the Committee will recommend for inclusion on the ballot paper at the referendum are as follows: (1) Under this option there would be one Island-wide electoral district. Each voter would have 38 votes at each election. Each Deputy would serve for four years and an election would be held every four years for all Deputies at once.

60 (2) Under this option there would be one Island-wide electoral district. Each voter would have 12 or 13 votes at each election. Each Deputy would serve for six years. An election would be held every two years for a third of Deputies each time.

65 (3) Under this option there would be two electoral districts. Each voter would have 10 votes at each election. Each Deputy would serve for four years. An election would be held every two years for half of the Deputies each time.

(4) Under this option there will be four electoral districts. Each voter would have nine or 10 votes at each election. Each Deputy would serve for four years. An election would be held every four years for all Deputies at once.

70 (5) Under this option there would seven electoral districts. Each voter would have five or six vote at each election. Each Deputy would serve for four years. An election would be held every four years for all Deputies at once. In other words, the current electoral system.

75 Deputies and others who favour the election of all Deputies on an Island-wide basis in a single
election on one day can rest assured that if the Committee's recommendations are accepted by
the States, and if the people demonstrate in the referendum that that is the system they want, it
will be introduced in time for the 2020 General Election. But the Committee makes no apology for
wanting to offer the people of Guernsey a reasonable range of options when determining their
80 future electoral system, and the Committee will continue to argue against those who would rather
restrict choice by offering voters a take-it-or-leave-it question on one electoral system only. When
the policy letter is debated by the States, those who are so insistent that the referendum should
be on one electoral system only will no doubt explain why they want to deny choice to the people
of Guernsey when asking them to determine their future electoral system.

85 The Committee's proposals are being developed openly and transparently. As far as I know,
the States' Assembly & Constitution Committee is the only Committee of the States which holds
its meetings in open session. Other Deputies attend occasionally, and the media choose to be
present at most meetings.

Organising the referendum has clearly been the Committee's priority since the first day of this
States' term. Other Deputies and members of the public have been welcome to express their
90 views. Some have done so, and these have helped to shape the Committee's proposals.

Some time ago, I wrote to the President of the Scrutiny Management Committee, offering to
provide it with any information it wished to have, in case it wanted to review or scrutinise the work
of the Committee. The Parish Douzaines, which place such an essential and valued role in helping
to organise elections in Guernsey, have been consulted on two matters in particular: the practical
95 operation of elections held under each of the Committee's five options; and whether they would
be prepared to run polling stations for the referendum.

All Deputies will have two further opportunities not just to express their views but actually to
determine the details of the referendum, including the question on the ballot paper, first when the
States debate the Committee's policy letter, and a second time when the States debate the
100 legislation which will give the referendum legal status.

Collectively, the Committee is neither passionately for nor passionately against Island-wide
voting, nor dogmatic about the use of referendums generally. Some of the five Members have in
the past voted in favour of proposals for some form of Island-wide voting. Others have voted
against, or not yet been in the States long enough to vote on the matter. Some of the Members
105 are sceptical about the use of referendums. Others voted in the last States in favour of holding a
referendum on the electoral system.

So Members of the Committee started their work on this issue from different positions but with
open minds, and through research and debate the Committee has reached unanimous
conclusions about the best way forward. The detailed proposals will be submitted and published
110 in the next few weeks. The States will then debate them and make resolutions in the normal way.

The referendum should ideally be held two years before the next general election, if any major
changes are to take effect at that election.

Thank you, sir.

115 **The Bailiff:** Members, there may now be a period for questions not exceeding 15 minutes.
That is to say, questions to be asked within the context of the Statement.

Yes, Deputy Stephens.

Deputy Stephens: Thank you, sir.

120 Could Deputy Fallaize advise the Assembly which, if any, possible negative impacts of
presenting a multiple choice in the referendum question have been discussed by his Committee
to date?

The Bailiff: Deputy Fallaize.

Deputy Fallaize: I think the two main issues are first of all that it is important that voters in advance of the referendum have a full and clear understanding of each of the options, so that they can express their legitimate views. The Committee is confident that that can be addressed through the promotional and explanatory work that will be done by the States in advance of the referendum.

One has to consider that the objections to the multi-choice, multi-option referendum are held to some extent by people who favour full Island-wide voting, where every voter has up to 38 votes to choose between 80 or 90 candidates. Well, one cannot very sensibly put that as a reasonable electoral system and then complain that a five-option referendum is too complicated.

The other issue is ensuring that the first choice wins the referendum and our proposals for preferential and transferable voting will deal with that very effectively.

Deputy Parkinson: Yes, could Deputy Fallaize please explain how any system of election involving more than one constituency could be described as an Island-wide system?

The Bailiff: Deputy Fallaize.

Deputy Fallaize: Well, clearly it cannot. The Committee does not dispute Deputy Parkinson's view. The Committee was directed to prepare or come back with proposals for a referendum which allowed the people of Guernsey to express a view on whether all Deputies should be elected in one single election on one day, and the Committee is coming back with proposals for a referendum which does that.

The Committee in addition is proposing that the public should be able to express their views on a range of other electoral systems, for some of the reasons I suggested in the Statement and others which will be explored in more detail in the policy letter.

The Bailiff: Deputy Green.

Deputy Green: Sir, thank you.

Can I ask the President of SACC: one of the great dangers of holding a referendum –

Deputy Fallaize: I'm not sure what he said! *(Laughter)*

Deputy Green: I will start that again, sir! *(Laughter)*

The Bailiff: I will start the clock again in that case.

Deputy Green: Thank you, sir.

One of the great dangers, one of the great risks of holding a referendum in Guernsey at a time which is not at the same as holding a general election, is the question of turnout. If we hold this referendum and the turnout is low, the decision that is made will lack legitimacy.

How does the President of SACC say that we can maximise the turnout for this and get a decent turnout for this referendum in order to make sure that the decision itself is a legitimate one?

The Bailiff: Deputy Fallaize.

Deputy Fallaize: Yes, I think that is a good point. Certainly, we are told that there is considerable enthusiasm for electoral reform and in particular for Island-wide voting. If that is true, turnout at the referendum would not be a problem.

The Committee is proposing that the States agree in advance – a year or so in advance of the referendum – to bind themselves to accept and implement the winning option, if I can call it that,

in the referendum, if the turnout is at least 40% of those inscribed on the electoral roll. If it is, clearly the result will have the legitimacy, in the way that Deputy Green refers to.

180 If the turnout falls short of 40%, the Committee's recommendation to the States will be that the Committee is then directed to reflect on the turnout, and particularly the distance between the actual turnout and the figure of 40% and come back to the States with any proposals it considers appropriate. But it is important, if the electoral system is to be changed, that it is done not because of the depth of feeling of a very small number of people, but because of the breadth
185 of feeling among the population generally, and turnout thresholds in referendums are very common. If one looks internationally, 40% is actually a relatively low figure.

The Bailiff: Your minute and a half is up, Deputy Fallaize. I have been asked to be firmer with the implementation of the Rules! *(Laughter)*

190 Deputy Gollop.

Deputy Gollop: Yes, I did appreciate the opportunity, like others, to attend your open Committee meeting. But I would like to ask, given the historical context of Guernsey enjoying for six years free elections ... a two-tier system of up to 12 Island-wide representatives elected a month prior to the others, and also the Jersey example of Island-widers being elected as Senators
195 on the same day as District Deputies, why were not those to options included in the options that you will put to the referendum?

A Member: Hear, hear.

200

The Bailiff: Deputy Fallaize.

Deputy Fallaize: Well, the previous States, very near the end of its term, did consider a requête on the introduction of the kind of system that Deputy Gollop mentions and it was
205 decisively rejected by the States. That system has been put to the States several times since it was abolished ahead of the 2000 election, and each time it has been rejected by quite considerable margins.

Also, the Committee is of the opinion that having a two-tier Assembly is unhealthy, and that was one of the reasons why it was abolished in advance of 2000; but it is for the States to determine the options that appear on the ballot paper. The Committee's policy letter includes an analysis of several electoral systems which it is not proposing to include as options. If Members
210 wish to substitute one option for another option then they can lay amendments when the Committee submits its policy letter.

215 **The Bailiff:** Deputy Langlois.

Deputy Langlois: Yes, sir.

There appears to be a lack of clarity about what is meant by 'preferential voting'. In some ways it is almost as controversial as the choices being given. I was just wondering whether Deputy
220 Fallaize could explain how advanced their thoughts were on the actual system of preferential voting.

The Bailiff: Deputy Fallaize.

225 **Deputy Fallaize:** In a minute and half, okay!

Well, the Committee's thoughts are very advanced. The system that will be proposed is known as the 'alternative vote' or 'instant run-off voting', where every voter ranks their preferences in order. They can rank only one option, if they want, as number one, or they can rank up to five options, one to five.

230 In the first round of counting, if one option has 50% plus one of the first preference votes, then it is immediately declared to have won the referendum, and no further counting will be necessary. If no option wins after the first preference votes are counted, the lowest placed option is eliminated and its second-preference votes are redistributed.

235 That is a very common system used in elections. It has been used in referendums. It has been used in referendums to determine electoral systems. That is essentially how it works. The Committee's policy letter will explain in more detail, and so will the promotional material ahead of the referendum.

The Bailiff: Deputy Dudley-Owen.

240 **Deputy Dudley-Owen:** Does Deputy Fallaize think that the general public's knowledge of complex voting systems is sufficient to be able to make informed decision in this matter?

The Bailiff: Deputy Fallaize.

245 **Deputy Fallaize:** Yes. The people of New Zealand managed it. The people of Australia managed it. The people of Andorra managed it, and there are other examples in the policy letter. I do not think the people of Guernsey are any less able to grasp complex issues than the people of those jurisdictions.

250 We are talking here only about five options, and the promotional material which will be put together in advance of the referendum, will provide all the detail and explanation that is necessary to assist voters, so that they can cast an informed choice at the referendum.

The Bailiff: Deputy Tindall.

255 **Deputy Tindall:** Thank you, sir.

I would like to understand, please, why a yes/no vote is a pointless exercise which leads to stalemate – the States has not been able to make a decision in decades – yet by giving the public a choice of, in effect, two Island-wide options, it will suddenly enable the States to introduce such a system.

260 Thank you.

The Bailiff: Deputy Fallaize.

265 **Deputy Fallaize:** Well, the reason it would work in the referendum is because of the use of preferential and transferable voting. The reason the Committee says a yes/no referendum on the concept of Island-wide voting would be pointless would be because the States would then need to interpret the result. That is what the Committee is very keen to avoid.

270 There is no point asking the States to interpret the result, because the States have spent 40 years or more unable to reach a settled view on the electoral system. If this referendum is going to be held, it needs to be on the basis that the result is clear, and a yes/no vote on the concept of Island-wide voting could not possibly be clear. 'No' would not necessarily be an endorsement of the present system, and 'yes' would mean that people who have vastly different views about the appropriate form of Island-wide voting would all have voted for the same option, so the States would be left having to interpret the outcome. That is of no use whatsoever. If this referendum is
275 to have any meaning, the result has to be clear.

The Bailiff: Deputy Prow.

280 **Deputy Prow:** Thank you, sir.

The President of SACC in his Statement has mentioned the role of the Douzaines, but I did not hear any mention of the Registrar of Elections or the role of Home Affairs. Could the President of SACC please expand on this, especially as they are going to be very tight deadlines.

285 **The Bailiff:** Deputy Fallaize.

Deputy Fallaize: Yes, the Committee has been in contact frequently with the Registrar-General of Electors over several different issues, and his advice is incorporated in the policy letter in several places.

290 My Committee has met the Committee for Home Affairs in relation to the electoral roll, because that Committee is responsible for the electoral roll. The latest draft of our policy letter, if it has not already been sent to the Committee for Home Affairs, it is on its way to the Committee for Home Affairs, so that the opinion of that Committee can be ascertained as far as use of the electoral roll is concerned, which is the aspect of this which falls under the responsibilities of that
295 Committee.

The Bailiff: Deputy Inder.

Deputy Inder: Thank you.

300 Deputy Fallaize, just touching on the registration ... I suppose two questions, really, wrapped up in the same thing. Will you be reopening the electoral roll, and will there be a role to play for the electronic census? In short, could we have any of our voting slips delivered to our computers?

The Bailiff: Deputy Fallaize.

305

Deputy Fallaize: The Committee is not proposing the use of electronic voting or electronic counting, for reasons which are explained in some depth in the policy letter.

In relation to the electoral roll, the electoral roll is open. The electoral roll is closed only in the period immediately before an election. There is updating of the roll carried out, when new
310 information becomes available, and there will be additional resources applied to that task, if the Committee's recommendations are accepted. So anybody who is not on the roll now will have an opportunity to enrol themselves ahead of the referendum.

The Bailiff: Deputy Oliver.

315

Deputy Oliver: Sir, I was just wondering, with all of these additional choices, what the promotional cost of advertising each one will roughly be.

The Bailiff: Deputy Fallaize.

320

Deputy Fallaize: The advice of the Committee to the States will be that the cost of those aspects of the referendum will be in the region of £60,000. There was some speculation, at the time that I originally proposed the referendum more than a year ago, that the cost would be up to £400,000, which the Committee advised at the time was nonsense. Some people persisted in
325 maintaining this position.

It is nonsense. The total cost of the referendum we very much hope to bring in at around – or hopefully just under – £150,000. If all of the staff costs are allocated to the referendum, but we are going to be in discussion with the Treasury, or the Policy & Resources Committee, about exactly which proportion of staff costs need to be allocated to the referendum.

330

But the core cost of the referendum itself is around £60,000.

The Bailiff: Does anybody else want to ask a first question? This is likely to be the last question.

Deputy Lester Queripel.

Deputy Lester Queripel: Thank you, sir.

I have often had concerns about the levels of communication from the States to the public. Can Deputy Fallaize give me an assurance that publicising and explaining this whole issue to the public will be comprehensive? Very often in the past, we have only had one article in the *Press* and many of the public have said they have missed that article, so obviously that is not sufficient. Are we going to have more than one *Press* article? Are we going to have more than one mention on the television and the radio?

I think we should go to the extent of having posters in doctors' surgeries and dentists' waiting rooms, etc. Can Deputy Fallaize give me that assurance please?

Thank you, sir.

The Bailiff: Deputy Fallaize.

Deputy Fallaize: Yes, I can. That is what the budget, which I have just referred to, will predominantly be spent on. It is critical, as Deputy Queripel suggests, that voters have a clear and full understanding of what they are being asked to vote on, well in advance of the referendum – and indeed that turnout is boosted as much as possible.

So the sort of promotional campaign which is run just in advance of a general election probably will be slightly too expensive for this sort of exercise, but we are looking at doing something which, in terms of the framework and the shape, is similar to what is done in advance of general elections, and I would be happy for the Committee to work with Deputy Queripel during that period to ensure that he too is satisfied that the communication has been adequate.

The Bailiff: The allotted 15 minutes has now elapsed and I am not minded to extend it, because clearly this matter is going to come back before the States in the near future anyway, and we are in danger of, I think, almost starting a debate today. So I am not minded to extend the 15 minutes.

We will move on with legislation, Greffier.

STATUTORY INSTRUMENT LAID BEFORE THE STATES

The Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 (Proscribed Organisations) (Amendment) Regulations, 2017

The Greffier: Statutory Instruments laid before the States: The Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 (Proscribed Organisations) (Amendment) Regulations, 2017.

The Bailiff: I have not received notice of any propositions to debate Statutory Instruments.

LEGISLATION FOR APPROVAL

**POLICY & RESOURCES COMMITTEE AND
COMMITTEE FOR ECONOMIC DEVELOPMENT**

**I. Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 –
Draft Projet de Loi –
Proposition carried**

Article I.

The States are asked to decide:

Whether they are of the opinion to approve the draft Projet de Loi entitled "The Beneficial Ownership of Legal Persons (Guernsey) Law, 2017", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.

370 **The Greffier:** Article I, Policy & Resources Committee and Committee for Economic Development – the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017.

The Bailiff: Any requests for any debate or clarification?

We go straight to the vote. Those in favour; those against.

Members voted Pour.

The Bailiff: I declare it carried.

COMMITTEE FOR EMPLOYMENT AND SOCIAL SECURITY

**II. Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017 –
Approved**

Article II.

The States are asked to decide:

Whether they are of the opinion to approve the draft Ordinance entitled "The Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017", and to direct that the same shall have effect as an Ordinance of the States.

375 **The Greffier:** Article II, the Committee for Employment and Social Security – the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017.

The Bailiff: Any requests for any clarification or debate? Those in favour; those against.

380

Members voted Pour.

The Bailiff: I declare it carried.

COMMITTEE FOR POLICY AND RESOURCES

**III. Protection of Investors (Limitation of Liability) (Bailiwick of Guernsey)
(Amendment) Ordinance, 2017 –
Approved**

Article III.

The States are asked to decide:

Whether they are of the opinion to approve the draft Ordinance entitled "The Protection of Investors (Limitation of Liability) (Bailiwick of Guernsey) (Amendment) Ordinance, 2017", and to direct that the same shall have effect as an Ordinance of the States.

385 **The Greffier:** Article III, the Policy and Resources Committee – the Protection of Investors (Limitation of Liability) (Bailiwick of Guernsey) (Amendment) Ordinance, 2017.

The Bailiff: Any clarification or debate? Those in favour; those against.

Members voted Pour.

The Bailiff: I declare it carried.

COMMITTEE FOR POLICY AND RESOURCES

**IV. Access to Neighbouring Land (Guernsey) Law, 2016
(Commencement) Ordinance, 2017 –
Approved**

Article IV.

The States are asked to decide:

Whether they are of the opinion to approve the draft Ordinance entitled "The Access to Neighbouring Land (Guernsey) Law, 2016 (Commencement) Ordinance, 2017", and to direct that the same shall have effect as an Ordinance of the States.

390 **The Greffier:** Article IV, Policy and Resources Committee – the Access to Neighbouring Land (Guernsey) Law, 2016 (Commencement) Ordinance, 2017.

The Bailiff: Any request for any clarification or debate? Those in favour; those against.

Members voted Pour.

The Bailiff: I declare it carried.

COMMITTEE FOR EMPLOYMENT AND SOCIAL SECURITY

**V. Same-Sex Marriage (Guernsey) Law, 2016 (Commencement) Ordinance, 2017 –
Approved**

Article V.

The States are asked to decide:

Whether they are of the opinion to approve the draft Ordinance entitled "The Same-Sex Marriage (Guernsey) Law, 2016 (Commencement) Ordinance, 2017", and to direct that the same shall have effect as an Ordinance of the States.

395 **The Greffier:** Article V, Committee for Employment and Social Security. The Same-Sex Marriage (Guernsey) Law, 2016 (Commencement) Ordinance, 2017.

The Bailiff: Any debate or clarification? Those in favour; those against.

Members voted Pour.

The Bailiff: I declare it carried.

COMMITTEE FOR HOME AFFAIRS

**VI. Data Protection: EU General Data Protection Regulation –
Propositions carried**

Article VI.

The States are asked to decide:

Whether, after consideration of the policy letter entitled 'Data Protection: EU General Data Protection Regulation' dated 13 March 2017, they are of the opinion:-

- 1. To direct the preparation of legislation for the purposes of implementing provisions equivalent to the GDPR and the Law Enforcement Directive in the Bailiwick;*
- 2. To direct the Committee to report back to the Assembly with detailed proposals in relation to the Data Protection Supervisory Authority and the sources of funding for the Authority in the third quarter of 2017.*

400 **The Greffier:** Article VI, the Committee for Home Affairs – Data Protection: EU General Data Protection Regulation (GDPR).

The Bailiff: The debate will be opened by the President of the Committee for Home Affairs, Deputy Lowe.

405

Deputy Lowe: Thank you, sir.

May I first apologise to you and indeed to Members. There is a page missing. The back page is missing of the States' Report, which confirms that the Home Affairs Members were unanimous in their support and our names underneath. This will be circulated later on this morning but I send
410 apologies to you all for that.

The Committee proposes the preparation of the new legislation and the legislation is intended to enable the Bailiwick to demonstrate in due course that it is a jurisdiction which provides an adequate level of protection for personal data in accordance with the standards set out in the GDPR and for the purposes of the Law Enforcement Directive.

415 The GDPR provides the Bailiwick with an opportunity to not only ensure that adequacy standards are met to continue to process the data of EU citizens but to also afford all Islanders the equivalent level of privacy rights as EU citizens. The GDPR represents the biggest global change in data protection in well over a decade and is a regulation that is relevant to every organisation irrespective of size or sector. Accountability is at the heart of the changes within an increased
420 expectation that organisations will be able to demonstrate compliance and ensure that the rights of data subjects are met.

Although there will inevitably be an increase in compliance obligations, this data protection reform provides the Bailiwick with a number of economic opportunities, particularly in creating a well-regulated compliant jurisdiction with highly trained and experienced data protection
425 professionals. By ensuring continued adequacy status from the European Commission, it will allow the continued transfer of personal data between the Bailiwick and EU member states. This is vital for the successful future of all the Islands of the Bailiwick, and, subject to the Assembly's approval today, I look forward to working with Alderney and Sark in the drafting process to ensure that all sectors throughout the Bailiwick are appropriately considered.

430 The Committee will report back to the Assembly with detailed proposals in relation to the Data Protection Supervisory Authority and the sources of funding for the Authority in the third quarter of 2017 with the anticipated model being that of self-funding. The Committee will also be putting on a States Members' workshop, which is scheduled in the project plan but the date is not yet set. We will, of course, let you know as soon as that has been firmed up.

435 Therefore, sir, I ask Members to support this Report.

The Bailiff: Deputy Prow.

Deputy Prow: Thank you, Mr Bailiff.

440 Sir, I rise to support both the recommendations in the policy letter before us. I shall not repeat the overarching points ably made by my President, which have demonstrated why we need to be developing our data protection regimes and why we need to be doing this now. However, I would just like to elaborate on some key data protection considerations for us as a jurisdiction.

445 Sir, Guernsey is undoubtedly at a turning point with regard to how we as a jurisdiction protect data. There are two major factors which are driving change. The first, as already outlined, is that the European Union is implementing a regulation which will be the largest change to data protection since 1995. This initiative will become law across Europe on 25th May 2018, which is not that far away. Local companies targeting goods or services to EU citizens will be required to comply with the GDPR regardless of what regulatory or legislative regime is in place locally. The
450 Island's current compliance adequacy ruling under the current EU directives will be reassessed against the GDPR and it is expected that, provided we enact the provisions contained within this policy letter, we will be considered adequate against the new standard.

The other consideration with regard to protecting data is the issue of cybercrime. Sir, as Members are hopefully aware, I recently attended a Commonwealth Parliamentary Association
455 international conference on national security. One day of the conference was put aside for the subject of data security. This threat is a global phenomenon. It has been said that sometime very soon more crimes will take place utilising the power of the internet than all other conventional crimes. It is an international challenge for regulators and law enforcement where conventional borders simply do not exist. The conference concluded that the efforts of governments,
460 parliamentarians, data regulators and law enforcement need to accelerate to keep up with the speed of available technology and advances to social media services. GDPR initiatives were cited as one international example of how jurisdictions can globally start to achieve this.

465 Sir, the Budapest Convention – that is the European Convention on Cybercrime – notes the profound changes brought about by digitisation, convergence and continued globalisation of computer networks. Electronic information is being used for committing criminal offences, including terrorism, child exploitation and serious fraud, and the evidence relating to such

offences is being stored and transferred by these networks. The Convention believes an effective fight against cybercrime requires increased rapid and well-functioning international co-operation. This is why the GDPR breached the notification provisions outlined in sections 3 and 4 of the policy letter, and all the provisions relating to the law enforcement directive relating to empowering competent authorities for the purposes of prevention, investigation or prosecuting of criminal offences are vitally important.

Sir, I can say with some certainty that Guernsey as a jurisdiction is at the forefront of responding to data protection challenges and combatting cybercrime. Following the decisions already made in this House last year, we have adopted a pan-Island data protection approach with Jersey. Our threats, challenges and reputational issues are identical. The appointment of a joint commissioner for both Islands will provide a more consistent and superior service to both jurisdictions and will save cost. However, that was just the beginning. We now need to work with the industry and Members of this House to develop these initiatives and the necessary legislation so that we are in a place of competitive advantage when the EU directive comes into play and to show the world that we are at the forefront of efforts to combat cybercrime.

Sir, today we need to continue to seize the window of opportunity and get ahead of the game by progressing the direction of the legislation outlined. Please support the recommendations.

Thank you, sir.

The Bailiff: Deputy Soulsby.

Deputy Soulsby: Sir, before I go any further I should like to comment up front that I will be voting for this policy letter. If we are to continue to be an international finance centre we have little choice. From that opening, Members may guess that what I am about to say is not exactly going to be without criticism of what we are about to embark on by passing this policy letter.

Outside the financial services sector this subject has hardly stimulated much debate in any media outlet. It is not really surprising – it is the latest in a long history of seemingly innocuous policy letters covering changes we have to bring in if we are to continue to be able to provide services internationally.

What I have to say is not in any way a criticism of the work undertaken, by the Committee for Home Affairs. In fact, I feel sorry for them because they have had no choice but to bring this policy letter to us today. It is written well and clearly sets out the direction we have to go in. However, the fact is this policy letter and the eventual legislation will have a profound impact on both Government and business here. Ironically, it also demonstrates why those who voted for Brexit to get rid of what they saw as unnecessary laws foisted on us by the EU were completely misguided. (**Several Members:** Hear, hear.) We are not even part of the EU, but if we want to trade with that august body we are going to have to follow their rules, and what it means is more cost and more bureaucracy – and for what overriding benefit? Well, I will deal with the latter point last.

Let's look at cost and bureaucracy, for a start. Aside from the fact that drafting on the GDPR is going to have to take precedence due to its complexity and the deadline for compliance, the ongoing requirements of this legislation will indisputably increase the cost of Government. Here I can say that unequivocally from a Health and Social Care perspective the impact will be to require more back office staff. It will go nowhere to improve patient care. The public are constantly attacking the States of Guernsey for the number of staff it employs and the cost of them. However, we need to take a long hard look at what those jobs are and why we have them. On the one hand there has been a huge growth industry in the number of independent statutory officials created over the last 10 years, which have grown and grown as outside pressures from the EU and elsewhere have increased their empires. Health and Safety, Trading Standards and Environmental Health are perhaps the more obvious, but there are plenty more tribunals, panels and advisory groups out there which are funded by the States. They all cost and that cost is passed on to both businesses and individuals. We really have to ask ourselves whether we have gone too far for a

population of 63,000. Has it grown out of all proportion to its benefit, each statutory office with its own premises and staff? I fully accept that in some areas the work undertaken really does add value to the Guernsey public, but I am sure that is not the case everywhere and every time. I have to say that I have a lot of respect for the Data Protection Commissioner, who conducts her work pragmatically and constructively. However, it is obvious from this policy letter that it will require an increase in the size of the office of the Data Protection Commissioner. We are told that is okay as the Commissioner can be self-funding through generating its own income. What that actually means in reality is an increase in the cost of doing business, and that is an increase in cost for all business whether or not it trades with the EU and for whom the legislation will not benefit them one iota.

So there must be a benefit from this, surely. Well, from an economic opportunity it seems the greatest, according to the policy letter, is in creating a well-regulated compliant jurisdiction. That is not an opportunity – unless no one else is doing it, of course. It certainly is not a USP. However, I guess the biggest benefit will be one that is likely to result in an increased cost – a strengthening of rights of data subjects. That has to be a good thing, especially where people have the right to access their data without having to pay for the right to do so.

Sir, as I said at the beginning of this speech, I will support this policy letter because we have not a choice. However, I do so rather reluctantly as all I can see is more bureaucracy and red tape with little additional benefit over and above the legislation we have in place for the vast majority of businesses on the Island.

The irony of supporting this policy letter should not be lost here. Many candidates in the last election stood on a campaign to reduce the size of the States. Many spoke about how it was ‘full of pen pushers and what did they do: we should focus on frontline staff’. Well, today, Members, we are voting to increase that pay bill and our back office staff as well. It is as simple as that, which just goes to show how much easier it is to be outside Government looking in than inside Government and trying to make a difference.

The Bailiff: Deputy Green.

Deputy Green: Sir, thank you.

I have got a few questions that I would like to share. As Deputy Soulsby said, obviously this is going to constitute a cost for Government, but in the policy letter itself there is no idea really, or no explanation, of what the cost or extra resources might be. We know from what the policy letter says that the compliance obligations will inevitably increase – that is what paragraph 6.2 says – so, ergo, the compliance burden goes up, the cost of that goes up. There is no idea from the policy letter of what that cost might be and I would ask Deputy Lowe to comment on that when she sums up.

Again, Deputy Soulsby made a good point, I think, when she talked about the impact this would have on prioritisation, because clearly by voting for this policy letter – particularly the first Proposition, the preparation of legislation in order to ensure that we can implement the General Data Protection Regulation and have that equivalence which we need to have ... By prioritising that work, sir, we will inevitably be having the effect of saying that other things should not have priority, which brings to mind the whole issue of how we actually timetable the priorities for legislation and how we prioritise what should be drafted and in what order.

So what are the implications of this if we vote for prioritising the preparation of this particular legislation with the potential benefits and potential disbenefits that it has, and what is actually going to suffer as a result?

Obviously, we have shared arrangements with Jersey in the handling of data protection and I think that is quite right that we do that. One thing that is not crystal clear from the policy letter – and it might be so obvious that it does not need to be said, but one thing that was perhaps not set out in detail in the policy letter is exactly what Jersey is doing in terms of their moves presumably to implement the same overriding regulation, because they will need to have

equivalence just as we have if we are to go on operating in the same markets. So it would be quite helpful if Deputy Lowe could comment on that because the whole policy letter implies really that Jersey are doing the same thing, but I am not sure that is necessarily crystal clear from what we have before us. Of course, Jersey are not just our near neighbours; they are our competitors in many of these markets and if they are doing something that is subtly different or adopting a different approach entirely, then we kind of need to know that, I think.

I talked about the implications of what it might mean for what we do in terms of the drafting of legislation, but there is also the issue of what it will actually mean in terms of priorities for the Committee for Home Affairs and the staff that Deputy Lowe has, what pieces of work might they be in effect dropping in order to prioritise this work as well.

The other overarching issue is what exactly is going to be the new organisational overhead for the States of Guernsey following implementation of these regulations.

I welcome this policy letter really, because I do not think we have any realistic alternative: we have to have adequacy, we have to have the European equivalence for the reasons that others have given. But one issue, I think, is if we do need to have this European equivalent, are there any additional requirements that might come out of the woodwork in due course regarding transparency for our businesses and for our Government which could affect not only the operation of Government but also the operation of our financial services sector – and I am not sure that those kind of implications are necessarily that clear for the time being either.

Finally, there is one other issue, which is how this relates to the more general issue of access to public information, because I think the implication again of supporting this is that almost certainly the States will need to make sure that it has a proper and effective document management policy for example, amongst other things, in order to comply with these new data protection regulations that, as I say, we absolutely have to do so, I think, but how does that actually move us forward in terms of the more general issue of seeking greater transparency in terms of public information. Deputy St Pier gave a ... I was going to say a helpful statement. He gave a statement recently – (*Laughter*) No, credit to him for doing this. He gave a statement recently, sir, updating the States on where the Policy and Resources Committee are in terms of their approach to access to information, so we now know where we are with that, rightly or wrongly. But it is the case that there could well be implications from the data protection agenda on that agenda, and I just wonder whether Deputy Lowe would like to comment on that, and indeed Deputy St Pier possibly if or when he speaks, in terms of how those two issues sit together.

Generally speaking, sir, we are in a more digital age and I think the right to privacy in a digital age is an important right that we should protect, enshrine and enhance, so I do welcome these proposals but, as I say, there are certainly many questions that this policy letter does generate.

The Bailiff: Deputy Graham, you wish to be *relevé*?
Deputy Tindall.

Deputy Tindall: Thank you, sir.

I support the Propositions in this policy letter and the work done to help make Guernsey ready for the introduction of the EU General Data Protection Regulation, but also in respect of the Law Enforcement Directive.

This work has not only been undertaken by the Committee for Home Affairs but others in the States and also in the business community, as they must. I was particularly pleased to note the following statement in the 2017 Guernsey Fire and Rescue Service Operating Plan issued only last week, which says that one of its 2017 service priorities is to 'review and amend the service's data protection policy to ensure compliance with the 2018 General Data Protection Regulation changes to the local data protection legislation'. I think this is an excellent example of how, in a document of only eight pages, a States body can endorse the importance of being ready for the implementation of this regulation. And it is only May next year. The regulation requires all organisations worldwide doing business with EU customers to have assessed their information

strategy, technology, processes and staff against the GDPR rules regarding personal data and have implemented changes to comply. Personally, I think that is a good reason for prioritisation.

625 We have heard criticisms: more costs and more bureaucracy. Whilst this is inevitably true, I have to disagree that it will not benefit people. It is essential to keep this data safe for everyone and to fight crime and to support business in Guernsey. I believe this is an opportunity for Guernsey – another positive, if you will – where we can lead the way and be innovative. It can be an incentive for stimulating innovation to achieve compliance without sacrificing revenue goals.

630 This is particularly pertinent with the release of the digital sector's strategic framework. Businesses can, through the privacy by design information strategy, incorporate data privacy in systems and processes when they are being developed or revised. Investing in data privacy up front should improve customer loyalty and avoid costs associated with penalties with reworking systems and processes to accommodate future personal data privacy rules. It provides the
635 opportunity to design in flexibility necessary to accommodate future clarifications and changes to the GDPR. Data-driven innovation will enable a clear understanding of the data to be collected and the reasons for collecting it. Metadata will assist in defining the scope of data resulting in a better understanding of the who, what, where, why and how of data. Data virtualisation is another opportunity which, by achieving a holistic view of the data, could make it possible to leave all
640 source data exactly where it is and still undertake the required review. And the introduction of the mandated data protection officer role provides an opportunity for organisations to better align data privacy and data security amongst all staff in the common pursuit of protecting personal data.

In my experience also, more often than not the EU does actually bring in rules, especially when
645 they come in by regulation and not by directive, that are actually for good reason and have a good benefit despite the cost. It is so important for businesses to protect the privacy of consumers by securing their personal data which is being collected in vast amounts on devices and sensors. Although GDPR may pose challenges, it provides opportunities for improving customer trust and fuelling innovation reliably and responsibly. It is another opportunity for
650 Guernsey and by supporting these Propositions it is an endorsement and a call to Guernsey businesses to grasp not only its importance but its potential.

Thank you, sir.

The Bailiff: Deputy Fallaize.

655 **Deputy Fallaize:** Thank you, sir.

I admire Deputy Tindall's enthusiasm for the subject. I must confess that I am closer personally to Deputy Soulsby's reluctant compliance than I am to Deputy Tindall's position. In fact, I think, Deputy Soulsby, this is inevitably going to be a very short meeting but it was worth turning up
660 almost to hear Deputy Soulsby's speech (**Several Members:** Hear, hear.) because I thought it was an excellent speech on an admittedly not very sexy subject.

The policy letter advises that later this year the Committee will report back to the States on the costs of funding the Authority, but it does not say anything – Deputy Soulsby referred to this point – about the costs to the public sector of compliance. I do not think that is a problem at this
665 stage, because of the nature of the Propositions, but I wonder if Deputy Lowe, when she replies to the debate, might give an undertaking that the subsequent policy letter that is produced later this year would make some reference to the cost not only of funding the Authority but also of various public sector bodies, including States Committees, complying with the regulations that are set down, because there is inevitably going to be some cost in terms of staff resource, even if it is
670 only opportunity cost. So I think it would be useful if the policy letter referred to that.

Of course, the best point that Deputy Soulsby made was in relation to the European Union, but that is for another day.

The Bailiff: Deputy St Pier.

675 **Deputy St Pier:** Sir, Deputy Green, Deputy Soulsby and indeed Deputy Fallaize have just referred to the question of the resource implications, not only of course, as Deputy Fallaize said, for the private sector but also for the public sector. The policy letter does refer in section 6 to the requirement for data protection officers and indeed that is an obligation on public sector bodies, so there will be a requirement for us to consider how we are going to discharge that obligation to have data protection officers.

680 I think in that context we do need to see data as being a valuable resource and therefore a resource which requires protection in order to preserve its value, so actually data protection officers are, I think, going to be the new growth career, in the same way that compliance was perhaps 10 years ago. So for those of you who have children and grandchildren thinking about
685 future career options I would suggest data protection officer would be one that they might wish to consider.

In terms of the resource implications, as Deputy Fallaize has said, it is perhaps too early to be able to quantify the resource implications for the public sector and for the public purse at this point, but it clearly is a priority that we do give some consideration to it and that will be necessary at some point.

690 In terms of the legislative priority as well that was also questioned, it will be necessary for this to be prioritised in order that we are positioned to ensure that this legislation is in place before May 2018.

I think it is worth emphasising that this policy helps raise the issue that the obligations under the general data protection regulation are not only jurisdictional – which is primarily what this
695 letter is about: it is preparing the jurisdiction to discharge obligations under the GDPR – they are also institutional for the businesses that process and control data, and ultimately also this is of great personal interest to every single member of our community and I think anything that helps to raise the profile of that, including this debate, is incredibly important.

700 It is also worth drawing attention to the fact that this new regulation, for the first time, creates obligations for data processors. Up to now, data protection regulations impose obligations on those that control data but imposing obligations on processors is a new development. The impact of this is that we will need to – ‘we’ as a public sector – but also every body, institution, company, business that controls or processes data will need to undertake data audits. They will need to
705 consider what data is held, where it is held. They will need to review all their contracts including the contracts they have with their staff, including the contracts they have with those that process their payroll, and their suppliers, their customers and many others in their supply chain.

So the implications of this for us and all the businesses that operate from here are huge and there is an enormous amount of work for us to do as a jurisdiction and for business to undertake
710 in order to properly prepare for this. The penalties for getting it wrong which again are alluded to in section 7 of the report are huge; the fines are typically a multiple of a business’s turnover ... in other words, the implications of getting it wrong are massive.

The slightly dystopian view of Deputy Soulsby, I absolutely understand that, but I am probably as a glass half-full individual more aligned with Deputy Tindall in seeing this as potentially, if we
715 get it right, an opportunity for the Island. For the first-time businesses, and indeed individuals, will really need to start to think about exactly where is data held. If you ask most people at the moment where is data held, they will say, ‘It is in the Cloud; it is light and fluffy, it is somewhere in the Cloud.’ (*Laughter*) But of course it is not in the Cloud, it is sitting on a server and the physical location of that server is incredibly important in terms of the control of that data and more
720 importantly the access to that data – who can access that data and under what circumstances. And our ability to regulate and legislate for who has access to data, together with the GDPR, actually provides a huge commercial opportunity for us as a jurisdiction if we get it right. I think that is what we very much need to pursue and I very much hope that the Committee of Home Affairs working with the Committee for Economic Development and its digital strategy will be
725 looking to identify and exploit exactly these kinds of opportunity.

Finally, sir, Deputy Green made reference to the very helpful statement which I provided (*Laughter*) to the Assembly – I was pleased to receive the acknowledgement in that regard – on access to information and referred to this issue. It would probably just be worth citing what I said in relation to that, which was that the Committee for Home Affairs will be placing a policy letter before this Assembly on data protection in April, which of course we are now discussing, and it may require the adoption of a document management policy. If it is agreed that we need a document management policy, then of course it may be possible to look ... as I said, it may be possible to dovetail these two pieces of work which in the context of the statement was in relation to the 30-year rule, but for the moment we did not feel it was appropriate at that point.

But I think, absolutely, we recognise that the implications of this policy letter and all that flows from it in terms of how we manage our own data, absolutely have implications for the issue which he was referring to, sir.

The Bailiff: Deputy Kuttelwascher.

Deputy Kuttelwascher: Thank you, sir.

Adopting policies and legislation to comply with GDPR, that is the easy bit. The difficulty is in putting in place cyber security defences.

I attended a seminar hosted by one of our banks recently and something I learned, which I did not know beforehand, was the biggest danger to data protection is the individual – it is you and me, staff members. The biggest leaks occur from inside.

Now, what have we got in place to vet everybody who deals with sensitive data? I do not know, but it is something that needs some serious consideration.

So at the end of the day the question is, do we or don't we want to do business with anything that holds data on EU citizens? Of course we do! And if we choose not to, well they will just say goodbye. We do not want to be blacklisted for not complying, we just cannot do that. So it is essential that we go ahead with this. But I think the focus has now got to be on informing all our businesses that hold data on the internet of how critical this is. Deputy St Pier mentioned these rather draconian fines, they could put a business out of business and if you choose not to pay them you would just not be doing business any more with the EU.

It is a serious subject but I still think the focus now has got to be on how do you implement the security aspects of this in order that you can deliver on what is required. The regulation is the regulation, and if people just break them it is a pointless exercise. So the security aspect has to be focused on now. And following this seminar that I had, run by one of the banks, I would say out of 80 or 90 representatives there nearly all of them seemed to be quite green in the area of cyber security. One person stood up and said, 'Our company has never been hacked.' And they said, 'Well, maybe it is because no-one has tried.'

Well it is true, hacking is not a 24-hour process that attacks your computer day and night for ever, and somebody has to focus on it. So focus on cyber security from here on and the rest of it should be just an academic process of getting in place the legislation so we can comply with the GDPR regulations.

Thank you, sir.

The Bailiff: Deputy Gollop.

Deputy Gollop: Sometimes when I go into a pub, one or two people try to stop me racing to the buffet table – no, not because of my health but because they want to talk about Brexit. They have been a little bit confused, as perhaps we all are to a degree, by statements from Deputy St Pier, Deputy Le Tocq and others, along the lines of how we have to understand the issue of the Great Reform Bill and the reform of things. The view from the public is: why bother, because Guernsey was never a part of the European Union?

But of course, without going into the complexities of Protocol 3, this is an example of how the European Union's walls of legislation directly affects Guernsey and where, in order to continue with our place in the competitive overall market that is supplying outside the Island, we have to be minded of these things including the third party role we have in that is how we are considered. And it is logical to assume post-Brexit that we will be even more of a third party because we voted with the United Kingdom and London to kind of protect our interest directly in the European Union. So this is sensible.

I could have bet money on Deputy Tindall speaking more or less in favour of a well-regulated Island as being essential for our competitive global integrity really, and our positioning as part of the ball game, and possibly I might have expected Deputy Ferbrache rather than Deputy Soulsby to put the other point of view so eloquently. But there certainly is a cost to this, and having attended the Douzaine meeting when we listened to the Douzeniers of St Peter Port there were several people there who clearly considered that this would be a cost to business.

I noticed too that in the section on fines it will for the first time bring in the requirement of all persons holding data to report any breaches ... and I thought, I must not leave any papers on a bus or whatever – *(Laughter)* no, I will be in a lot of pickles again. Clearly this could impact actually on individuals, on voluntary agencies, on businesses in the social sector and on third sector organisations. So it goes beyond what we might consider the corporate and financial sectors.

Like all these things, the problem with the nature of cutting-edge legislation is that it tends over time to take power away from politicians and give them more to perhaps the judiciary and statutory officials. For example, if I point to the fourth page of this Report which has the six data protection principles set out in Chapter 2, Article 5 of the GDPR. One of them is:

Personal data shall be:

... (b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall ... not be considered to be incompatible with the initial purposes ('purpose limitation');

Well, that encompasses quite a wide range, I think, of interpretation; what might be in somebody's public interest of a campaign, of lobbying or so-called historical research, would not be somebody else's. So I do consider that although we will probably vote this all through today, there is a lot of work for Deputy Lowe's workshops to achieve in actually making it meaningful for us, what we have to look at.

Finally, I not only endorse the remarks Deputy Green made about the need again to look at public information in relation to data sharing, but Deputy Soulsby made the speech of the day at the beginning of this debate. But I did hear, of course, Deputy Soulsby in her Health presidency role on BBC a couple of days ago, and there were a few points made about the nature of access to data, probably exclusively within this Bailiwick, because unless the servers are outside the Island the issues there were more about should patients have access to their medical records from every provider of service.

Another intriguing question that I know has been a matter of significance of two major Committees, if not three, has been how far should data be owned by providers of medical or other services to the States, and how much of it should be owned by the public weal so that all individuals who are either professionals or the people affected have permanent access to it. Then of course there is the contrary question of when should the data be excised and no longer available on anybody's record?

So I think this potentially goes beyond our international and commercial needs to giving the public hopefully more rights in relation to who owns their information and how they can make best use of it without recourse to the courts. And I will support the principle.

The Bailiff: Deputy Lester Queripel.

Deputy Lester Queripel: Thank you, sir.

825 Deputy Gollop mentioned things he wants the Committee to look at. But there is something I think the Committee needs to look at, if they have not already done so. I would just like clarification on this please because section 2, Data Subject's 'Rights, point 3:

Right to erasure of personal data when it is no longer required ...

I realise, sir, that Deputy Lowe might not be able to answer this question, but my concern is who is responsible for the destruction of such data when it is no longer required? Is that destruction witnessed by anybody else? That is the kind of detail I think the Committee need to
830 be looking at. If the answer from Deputy Lowe is no, they have not looked at that, then I would like them please to look at that when they come back to us with their report later on.

Thank you, sir.

The Bailiff: I see no-one else rising. Deputy Lowe will reply.

835

Deputy Lowe: Thank you, sir.

I know and I appreciate how some people are really not too keen to be voting for this because it does look like we are going to have more and more bureaucracy, but it is so important, it is
840 really important. The biggest problem would be for Guernsey and the Bailiwick, and the biggest cost to us would be actually to reject this. We have to make sure we are leading the way with it because it is just so important.

It is taking a two-year lead-in because there is just so much to do, so much work to carry out, and so many changes to it, but equally it is to make sure that we do all the presentations and make people aware as individuals and businesses how much they are going to have to do in
845 future. We owe it to everybody in our community, as explained by Deputy St Pier, that we are going to have to comply with this and it is vital that we are looking after the residents here in our Bailiwick.

I think Deputy Green said, what is the number of benefits outside of our economy? It is exactly that: it is the privacy of our residents being the most important. And efficiencies and information-
850 sharing and record-keeping and the management, which we are currently hugely inefficient across the States, and that covers the point Deputy Kuttelwascher mentioned. We really are going to have to improve our ways of how we keep data here across the States of Guernsey.

The cost itself to the States of Guernsey: I think at the moment it is going to be a small amount of additional resources, but we obviously hope to keep that to a minimum. A lot of this will be
855 through training, because it is important that staff right across the States are fully aware of their responsibilities – no longer can they just send an email or look at data and put it in an electronic file and think that is it. They have a responsibility for the amount of time that they can keep it there, about what is on that data, etc. So for the States of Guernsey employees, as such, it is going to be massive because people have been unaware as Deputy St Pier said. I have been to various
860 presentations and seminars that have been put on by different companies and indeed by ourselves, and there are more to come for 2017 and indeed for 2018.

It is absolutely right. People just think it is up there on the Cloud – but where in the Cloud is this data? It is shockingly surprising really, that people have no idea where their data is being
865 stored at the moment. So that again is really relevant to what we have got here before us.

The Jersey project: we work virtually daily with Jersey and that is a question ... Deputy Green is
870 chatting there, but I am answering you, Deputy Green, on your question here. (*Interjection*) We work daily with Jersey on the data protection and again when we have been to Brussels about it as well, we have gone down together. So we are working very closely with Jersey for that because although we are competitors that is absolutely right, but they are not wanting to be left behind either on the data protection. It is vital not only to our finance industry, but everybody in our community. We have been trying to put that message out, it has been in the statement that I made, it has been in the report last year, and at every opportunity we have got, I highlight it – not

only in here but outside. People, as individuals, have to be aware as well that this affects everybody, it is not just a business thing and it will affect everybody.

875 On our project team we have currently got the additional staff resources which is also with Policy & Resources and we bring the reports together, but P&R are very much involved with that and indeed the prioritisation of the legislation has to go at the top, because unless we have got this in place there is no point in our sitting round here doing lip service and saying, 'Oh yes, we want to do that' and the legislation takes years to come through. That cannot happen. Legislation
880 is going to have to be in place by May of next year, for the start date in May 2018, which is why the Report will be back to you by the end of the year and no later.

So I ask Members to please support the Report before you.

The Bailiff: There are two Propositions and I put both to you together. Those in favour; those
885 against.

Members voted Pour.

The Bailiff: I declare them carried.

VII. Schedule for future States' business approved

Article VII.

The States are asked to decide:

Whether, after consideration of the attached Schedule for future States' business, which sets out items for consideration at the Meeting of the 17th May 2017 and subsequent States' Meetings, they are of opinion to approve the Schedule.

The Greffier: Article VII, Schedule for Future States' Business.

890 **The Bailiff:** Deputy St Pier.

Deputy St Pier: Sir, I wish to table this. I have nothing further to add.

The Bailiff: Deputy Gollop.
895

Deputy Gollop: I support the tabling but I wish to point out that the Development & Planning Authority has three policy letters in draft form and will hope to present them at the earliest opportunity. We will schedule to bring them back for the next meeting.

900 **The Bailiff:** Right. Deputy Fallaize.

Deputy Fallaize: Yes, sir, on a similar point, the policy letter I was referring to earlier in my statement on the referendum will be submitted, as I said, in the next few weeks, probably in about three weeks. Could I ask that the Policy & Resources Committee, when considering when to
905 schedule that for debate, take account of the need for the period of preparation between the debate on the policy letter and the holding of the referendum, and then from the date of the referendum to the date of the next general election ... in other words to look favourably upon any request for it to be debated this side of the summer recess.

910 **The Bailiff:** No-one else is rising. I put the Schedule to you for approval. Those in favour; those against.

Members voted Pour.

The Bailiff: I declare it carried.

915 Well, Members, we will be meeting again on 26th April, can I just remind you – sorry, not 26th April, that is today! (*Laughter*) We will be meeting again on 17th May, when the meeting of the States of Deliberation will follow a meeting of the States of Election. Nominations for the position of Jurat will close on Friday; as of this morning there was one nomination that had been received, there may be more nominations before Friday, I know not. But even if there remains only one nomination can I just remind you that there will still need to be an election because the Reform Law provides, and I quote:

... no candidate shall be declared elected unless he has polled a number of votes greater than one half of the number of members of the States of Election present at the meeting of which the election is held

920 So there will be an election on 17th May, come what may.
Thank you very much. That concludes this meeting and we will resume on 17th May.

The Assembly adjourned at 10.50 a.m.